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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re ROBERT J., a Person Coming Under
the Juvenile Court Law.

B212172

THE PEOPLE,

(Los Angeles County
Super. Ct. No. FJ42707)

Plaintiff and Respondent,

v.

ROBERT J.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County, Robert J. Totten, Commissioner. Affirmed.

Holly Jackson, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Paul M. Roadarmel, Jr. and Tannaz Kouhpainezhad, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

The juvenile court sustained a petition alleging one count of first degree residential burglary against minor and appellant, Robert J. Based on inconsistencies in the main witness's testimony, the minor contends there is insufficient evidence to support the judgment. We disagree and affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

I. Factual background.

A. *Prosecution case.*

On January 1, 2008, Inner Aquino was living at 160 East 59th Place, which had two separate houses on it,¹ as well as a converted garage. Inner² lived at the converted garage; his mother and sisters lived at the larger, primary residence on the property. Inner's mother, Rosa del Carmen Aquino, was outside sweeping on January 1 at around 1:00 or 2:00 in the afternoon when she saw someone, the minor, on the porch of the smaller residence. She asked what he was doing there, but he didn't say anything.

Noticing that the minor carried two black bags, Rosa asked him what was in them. When she demanded he show her what was in the bags and threatened to call the police, there was a struggle, he pushed her and she fell. The minor tripped over a ladder and his shoes fell off of him.³ Because one of the bags ripped, Rosa was able to see a Nintendo game system, a jar of money and some bottles inside. Inner testified that jewelry, money, a bottle of alcohol and a Nintendo game system were missing.

¹ The address of the second, smaller residence is 5955 Wall Street.

² Because more than one witness has the same last name, we refer to witnesses by their first names.

³ At trial, the shoes, which were black and gray, were introduced. Rosa said they were not the shoes left at the scene; she remembered those shoes as being white. The shoes left at the scene of the burglary were produced at the hearing. "Those are not the ones. They were white. [¶] . . . I remember them being white. I don't even remember anymore. I don't know. I was so startled that day. I don't [even] remember."

Without shoes on, the minor ran towards San Pedro, and Rosa followed him to a house that was under construction, where he hid in a crawl space. After about 10 minutes, he came out. Rosa followed him home. The minor, now fully clothed and wearing shoes, came out, but out of the house next door. At a field show-up Rosa identified him.⁴

Later, when the police came to investigate the crime, Rosa pointed them to the shoes, which did not belong to anyone who lived at the property. Officer Joseph Marx, who investigated the burglary, went to 338 East 59th Place, which was two-to-three blocks from where Rosa lived. Officer Marx showed the shoes to Robert J. and asked what he knew about them. Robert J. said they were his shoes, but “ ‘I don’t know how they got there.’ ”

At trial Rosa initially identified the minor as the person she saw standing on the porch the day of the burglary:

“Q Now, as you sit here in court, do you recognize anyone here in court?

“A Well, I know . . . it was that boy.

“Q When you say that boy—

“A Him.”

Later, on redirect examination, she was asked “[a]s you sit here today, the minor that sits here in court, is that the individual that was on your porch property that had the two black bags?” This time, Rosa said, “I don’t know. It’s all so – I don’t know.” Rosa admitted not wanting to testify and not wanting the case to be prosecuted.

B. *Defense case.*

Robert J. testified that he did not burglarize the property. He was at his grandmother’s house until his sister picked him up and drove him home after first stopping at McDonalds. At trial, he said that the shoes weren’t his and he only told the officer they were because he was scared, nervous and crying. When the juvenile court

⁴ It is unclear out of which house the minor came out of—the one he ran into or another one nearby. Rosa also testified that Robert J. didn’t come out of a house. Rather, she saw him walking on the sidewalk.

asked what he meant when he said “ ‘I don’t know how they [(the shoes)] got over there,’ ” Robert J. replied he didn’t know what he meant.

Robert J.’s father also testified. On January 1, 2008, he saw Rosa standing outside his mother’s house (338 East 59th Place) where he lived. While he was talking to her and the police, the minor drove up with his sister. He heard Rosa say, “ ‘Well, I don’t know. He looks like him. He looks like him. I don’t know if it’s him.’ ”

Robert J.’s sister testified that, on January 1, 2008, after leaving work at about 1:00 p.m., she picked Robert J. up from his grandmother’s house and drove him to McDonalds and then to 338 East 59th Place. When they arrived, the police were there. Robert J.’s uncle saw Robert J. arrive home with his sister.

Robert J.’s cousin said he saw Robert J. at their grandmother’s house at about 1:00 p.m. on January 1, 2008.

II. Procedural background.

On March 3, 2008, a petition under Welfare and Institutions Code section 602 was filed alleging one count of first degree residential burglary. After a hearing on the petition, the juvenile court sustained it. The court said: “[T]he court heard a lot about times, and there [have] been recollections that have been different from the factual recitation that were given to me by other witnesses or written down memorialized, and that’s not a surprise after ten months have gone by. The court’s left with three . . . unalterable facts; one, that the victim clearly identifies this young man as being the person who was on her property. [¶] She has, I think, waffled on occasion, but I believe that’s because, I believe strongly, that’s because she does not want a dispute with her neighbors. She feels allegiance to her neighbors and does not want to cause difficulty with her neighbor. [¶] She was very careful to say she was being forced to be here to testify, but the court believes the bottom line that she identified this young man. Having stood alone, that won’t be sufficient with the recantations; however, we have the addition of the shoes. I realize the young man says those were not his shoes. I don’t believe that. [¶] I believe that they were his shoes and it is supported by the stipulation today with regard to the statements given to the defense investigator that those were his shoes. The

only way those shoes got on the property, he was wearing them, they came off his feet and the person is left holding the bags.” “There are some issues that have caused me pause with regard to this case, however, I agree with the People, that I am left with the defining facts that this witness, I believe, clearly identified this young man, I did acknowledge[] that there [were] points where she failed to identify. I believe there [were] reasons for that, but I think she’s shown clarity of clarification. This young man’s shoes were there. And I do not accept the explanation as to why this young man would say they were his shoes if they were not, and with his explanation that I thought they got them from my closet all pointed.”

On October 10, 2008, the juvenile court sentenced Robert J. to six months’ home on probation.

DISCUSSION

I. There is sufficient evidence to support sustaining the juvenile petition.

Robert J.’s sole contention on appeal is there is insufficient evidence to support the judgment based on Rosa’s identifications of him and of the shoes. We disagree.

The same standard of appellate review is applicable in considering the sufficiency of the evidence in a juvenile proceeding as in reviewing the sufficiency of the evidence to support a criminal conviction. (*In re Sylvester C.* (2006) 137 Cal.App.4th 601, 605; *In re Ryan N.* (2001) 92 Cal.App.4th 1359, 1371.) The critical inquiry is “whether, after reviewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” (*Jackson v. Virginia* (1979) 443 U.S. 307, 318-319.) We “ ‘review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence—that is, evidence which is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.’ [Citations.]” (*Ryan*, at p. 1371.)

The juvenile court here, although it noted the problems with the case, said it believed that Robert J. was the perpetrator of the crime because Rosa identified him and because the court believed that the shoes belonged to Robert J. There was evidence to

support the court's conclusions. First, Rosa did identify Robert J. to the police on the day of the burglary. She also initially identified him at trial, although she later recanted. The officer who investigated the crime found shoes. When the officer showed the shoes to Robert J., Robert J. said they were his, although he didn't know how they got there. The juvenile court pointedly asked Robert J. what he meant by his statement, " 'I don't know how they got there.' " But Robert J. was unable to answer the court's question.

Rosa did make contradictory statements with respect to her identification of Robert J. as the perpetrator and as to the shoes he allegedly left behind. Although she initially identified Robert J., she later said she didn't know if it was he. Rosa also gave confusing testimony, for example, about when she next saw Robert J. after she followed him home: she said he came out of a house *and* then she said she didn't see him come out of a house; instead she saw him walking on a sidewalk. Rosa was also unable to identify the shoes recovered by police officers. When shown the shoes in court, she said they were not the shoes left by the burglar. The ones the burglar left were, she recalled, white, but the ones produced in court were black. Then she said, "I don't even remember anymore. I don't know. I was so startled that day. I don't [even] remember." At trial, Robert J. said the shoes weren't his—although he had previously admitted they were. His explanation was he was scared, nervous and crying.

Did the prosecution's main witness make contradictory statements? Yes. Does this mean there is insufficient evidence? No. As we noted above, the juvenile court said it believed Rosa's identification of Robert J. and believed she was recanting because she just wanted to be a good neighbor. The court also disbelieved Robert J.'s denial that the shoes were not his. The court sat as trier of fact and had the benefit of seeing each witness as she or he testified. "[W]e must be ever mindful of the fact that it is the exclusive province of the trier of fact to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends." (*In re Ryan N. supra*, 92 Cal.App.4th at p. 1372.) We are in no position to weigh conflicts or disputes in the evidence. (*Ibid.*) There being sufficient evidence for the court's conclusions, we must affirm the judgment.

DISPOSITION

The judgment is affirmed.

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ALDRICH, J.

We concur:

CROSKEY, Acting P. J.

KITCHING, J.